IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Revision No. 828 of 2007.
Date of Decision: August 01, 2007.

K.L.Gandhi & Anr.

....Petitioners

through
Mr. K.K.Aggarwal, Sr. Advocate &
Mr. C.D.Kataria, Advocate.

Versus

Central Bureau of Investigation

...Respondent

through
Mr. Rajan Gupta, Special PP.

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.(ORAL)

This revision petition is directed against the order dated 25th April, 2007 passed by the learned Special Judge, Central Bureau of Investigation Court at Chandigarh whereby the petitioners' application to discharge them from the case arising out of FIR No.RC-2(S)/0006/SCB/CHG dated 29th March, 2006, under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Section 120-B IPC, has been dismissed.

The facts may be noticed briefly.

At the relevant time, petitioner No.1 was posted as Protector of Emigrants at Chandigarh, while petitioner No. 2 was his Clerk. A complaint was received from one Anil Yadav, Managing Partner of Shanti Travel, Chandigarh alleging that the petitioners were demanding a bribe of Rs.5 lacs for emigration clearance for about 300 passports during a period of two months. It was further alleged that petitioner No. 1 had threatened that if the amount was not paid, no further clearance will be granted. Accordingly to the complainant, when he expressed inability to pay such a huge amount, he was asked to pay Rs.75,000/- as initial amount and the balance later on.

A trap was laid and two independent witnesses were joined. Rakesh Kumar – an employee of Shanti Travels brought the money to be paid to the petitioners; he was accompanied by the shadow witness when he entered the office. The said Rakesh Kumar was allegedly called by petitioner No. 2 in-side the office of petitioner No.1 through Sohan Lal – a peon. The shadow witness – Anil Kumar, however, was not allowed to enter the office room of petitioner No.1 and the door was closed by Sohan Lal. After some time, Rakesh Kumar allegedly came out and informed the shadow witness that the bribe money had been taken from him. Upon getting the pre-assigned signal, the CBI team rushed inside the office of petitioner No.1 and Rakesh Kumar having identified Sohan Lal, to whom the bribe money was handed-over allegedly at the instance of petitioner

No.1, the said Sohan Lal was caught and post-trap proceedings were conducted. The bribe amount was also recovered from the pocket of Sohan Lal. The said Sohan Lal is alleged to have made a statement under Section 164 Cr.P.C. to the effect that the amount of Rs.75,000/- was received by him from Rakesh Kumar at the instance of petitioner No.1 in the office chamber of the latter.

It appears from the record that subsequently the prosecution moved an application to grant pardon to Sohan Lal – Peon. The said application was allowed vide order dated 8th November, 2006. Sohan Lal was granted pardon thereby allowing him to be arrayed as a prosecution witness.

Thereafter, charge-sheet was filed against both the petitioners under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Section 120-B IPC. It was at that stage that the petitioners moved an application for discharge which has since been dismissed by the learned Special Judge vide the impugned order.

Aggrieved, the petitioners have approached this Court.

It is vehemently contended by the learned counsel for the petitioners that neither the confessional statement of Sohan Lal – Peon has been recorded in accordance with law nor he, having failed to inculpate himself, can be declared an approver. It is also contended that the confessional statement of Sohan Lal-Peon has been recorded on oath, which is contrary to the settled law. In

support of his contention, learned counsel for the petitioners has placed reliance upon a recent judgment of the Apex Court in the case of **Babubhai Udesinh Parmar v State of Gujarat, 2007 Crl.L.J.,786** and a Division Bench judgment of Calcutta High Court in the case of **Jayanti Bhattacharya etc. v State of West Bengal, 2006 Crl.L.J.3414**.

It is further contended by learned counsel for the petitioners that since the evidence collected by the Investigating Agency which forms part of the report under Section 173 Cr.P.C., does not even remotely suggest that the petitioners ever demanded bribe from Rakesh Kumar and/or voluntarily accepted the same, *prima facie* no offence under Section 7 or 13(1)(d) read with Section 13(2) of the 1988 Act can be said to have been committed by them. In this regard, reference has been made to a judgment of the Madhya Pradesh High Court in the case of **Suresh Kumar Shrivastava v State of M.P., 1994 Crl.L.J.,3738.**

Having heard learned counsel for the parties and after going through the judgments relied on behalf of the petitioners, I am of the considered view that this petition is wholly misconceived and the impugned order does not warrant any interference.

It is well settled that at the time of framing of the charges, the Court is not required to pass a “judgment” and only a *prima* facie opinion on the basis of the material collected during the course of investigation is required to be formed. As may be noticed from the

impugned order, learned Special Judge has applied his mind to the said material and thereafter only tentative opinion to proceed against the petitioners, has been formed. The questions as to whether the confessional statement of Sohan Lal has been recorded in accordance with law or not and as to whether or not the same is admissible in evidence, are to be gone into at an appropriate stage and it is not desirable and/or expedient to express any views in relation thereto at this stage. Suffice it to say that there is sufficient material on record to, *prima facie,* suspect the involvement of the petitioners in corrupt practices.

Consequently, no interference in the impugned order is called for. Dismissed.

August 1, 2007. **(SURYA KANT)**
dinesh **JUDGE**